UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

MANUFACTURERS WOODWORKING ASSOCIATION
OF GREATER NEW YORK INCORPORATED

and Case 2-CA-35702

PETERSEN GELLER SPURGE, INC. AND
PATELLA MANUFACTURING, INC.

Karen Newman, Esq. for the General Counsel.
Merril Mironer, Esq. for the Charging Parties.
Denise Forte, Esq. and *Scott Trivella, Esq.*
for the Respondent.
Gary Rothman, Esq. for the Union.

DECISION

Statement of the Case

D. BARRY MORRIS, Administrative Law Judge: This case was heard before me in New York, NY on September 27, 2004. Upon a charge filed on August 8, 2003, a complaint was issued on March 30, 2004, alleging that Manufacturers Woodworking Association of Greater New York Incorporated ("Respondent" or "MWA") violated Section 8(a)(1) of the National Labor Relations Act, as amended (the "Act"). Respondent filed an answer denying the commission of the alleged unfair labor practice.

The parties were given full opportunity to participate, produce evidence, examine and cross-examine witnesses, argue orally and file briefs. Briefs were filed by the parties on November 29, 2004.

Upon the entire record of the case, including my observation of the demeanor of the witnesses, I make the following:

Findings of Fact

I. Jurisdiction

Respondent is an organization composed of various employers engaged in installation and woodworking manufacturing. It represents its members in negotiating and administering collective-bargaining agreements with labor organizations, including NYC District Council, UBCJA (the "Union"). Respondent has admitted, and I so find, that it is engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. In addition, it has been admitted, and I so find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practice

A. The Facts

1. Background

MWA is a multi-employer bargaining group. The employer companies are in the business of the manufacture and installation of woodwork, such as judges' benches, fine paneling and cabinets.

Respondent and the Union are parties to a collective-bargaining agreement, effective July 8, 2002 through June 30, 2007. The parties' Memorandum of Understanding, executed on July 8, 2002 and effective through June 30, 2007, includes as Article I, Section 7, a provision (the "Clause"), which reads, in pertinent part:

> The Union shall not allow the installation by any of its members of any woodwork, which is identified as not being furnished and/or manufactured by a signatory to this agreement or in the alternative which is not furnished and/or manufactured by a shop that is paying equal to or better than wages and fringe benefits provided for in this agreement subject to applicable law.

By letter dated December 9, 2002, MWA notified the Union that MWA members had lost work on 21 projects to shops outside the Union's jurisdiction. Respondent reminded the Union of its contractual responsibility to prohibit the installation of woodwork that does not meet the contract's requirements. The letter stated that the Union would be in breach of the collective-bargaining agreement if it did not meet its obligations.

On April 25, 2003 Respondent filed a Demand for Arbitration, alleging a breach of Article I, Section 7 of the July 8, 2002 Memorandum of Understanding. On July 31, 2003 Respondent withdrew its request for arbitration. The parties stipulated that if the Clause is found to be lawful, MWA intends to seek its enforcement.

2. Testimony of Witnesses

Peter Thomassen, the president of the Union, testified that during the last several years Union membership had decreased by approximately 40%. He testified that the intention of the Clause was to "stem the ongoing problem of having our shops … going out of business". When asked what the Union would do if the Clause were found to be enforceable, he testified:

> [W]hat we would do if the language was enforceable, I would have to say at this point it would be speculative. But I would have to say that we would try and do … would be a learning curve….We would have to sit down with the MWA and also other shops that are outside of the New York City area, and start to make them understand that we have language that's enforceable and hopefully sit down across a table from each other and work this out, so there isn't any work stoppages or

anything of that nature.

Thomassen further testified, “where we have men on the job” and a product is brought in which wasn’t manufactured in one of their shops, “we cannot instruct the members not to handle

it. That is up to the individuals. They have to decide on their own if they want to handle the material or not”.

Thomas Spurge, vice-president of one of the Charging Parties, was called as a witness by General Counsel. He was asked what would happen if the Clause were enforced. He testified, “We don’t have any idea what the enforcement of the clause would mean”.

Paul Ignelzi is president of Ignelzi Interiors, a manufacturer and installer of woodworking products. He was chairman of the negotiating committee on behalf of MWA. He testified that the purpose of the Clause, as stated at the bargaining table, was to “preserve the jobs in New York”. Edmund Greco, president of Midhattan Woodworking Corp., testified that his company manufactures and installs architectural woodwork. He testified that the purpose of the Clause was to “preserve the work that was traditionally done by local manufacturing and installation shops”. Scott Trivella, counsel to MWA, testified that the purpose of the Clause, as stated at the bargaining sessions, was to “preserv[e] the manufacturing and installation of architectural millwork”.

All of the witnesses appeared to me to be credible. They testified in a forthright manner and their testimony was not contradicted. In addition, their testimony appeared to me to be plausible. Based on these factors and the witnesses’ general demeanor, I credit the testimony of each of them.

B. Discussion and Conclusions

1. Work Preservation

Pursuant to *National Woodwork Mfrs. Ass’n v. NLRB,* 386 U.S. 639 (1967), Respondent argues that the Clause is a lawful work preservation clause and is not prohibited by Section 8(e) of the Act. The complaint does not allege a Section 8(e) violation. Inasmuch as General Counsel concedes that the Clause does not violate Section 8(e), I believe that it is unnecessary for me to decide whether, in fact, the Clause is a lawful work preservation provision.

2. Alleged Unfair Labor Practice

On April 25, 2003 Respondent filed a Demand for Arbitration to compel the Union to enforce the Clause. Paragraphs 6(b) and (c) of the complaint allege that by so doing Respondent sought to “obtain an unlawful objective” and sought to “cause the Union to require employees to engage in an illegal and unprotected strike or job action”. As General Counsel stated in her Opening Statement, enforcement of the Clause would require the Union to induce a “work stoppage in violation of Section 8(b)(4)(B)”.

Thomassen testified that if the Clause were found to be enforceable, the Union would “sit down across a table” with the shops and “work this out, so there isn’t any work

stoppages or anything of that nature". Thomassen also testified that members have to "decide on their own if they want to handle" material which is not manufactured in their shops. Spurge testified that "we don't have any idea" what enforcement of the Clause would entail.

As stated earlier, I credit the testimony of Thomassen and Spurge. It is well-settled that the "burden of establishing every element of a violation under the Act is on the General Counsel". *Iron Workers Local 386,* 325 NLRB 748, 756 (1998). General Counsel has made no showing that the Union intends to obtain an "unlawful objective" or to engage in a work

stoppage. See *Local 12, Operating Engineers (Cal Tram Rebuilders),* 267 NLRB 272, 275 (1983). Accordingly, the allegation is dismissed.

Conclusions of Law

1. Respondent is engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has not violated the Act in the manner alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended:[1]

ORDER

The complaint is dismissed.

Dated, Washington, D.C.

D. Barry Morris
Administrative Law Judge

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.